

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0234P

Adjusted Gross Income Tax

Fiscal Year Ending 05/31/94 and 05/31/95

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. **Tax Administration**— Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer's corporate headquarters are located in Warsaw, Indiana and was assessed a penalty for the underpayment of taxes for fiscal years ended May 31, 1994 and 1995. The underpayment resulted from an IRS audit where the taxpayer did not notify the department within the required one hundred and twenty (120) days. According to IC 6-3-4-6 (b) a taxpayer shall notify the department of any modification of:

- (1) a federal income tax return filed by the taxpayer after January 1, 1978; or
- (2) the taxpayer's federal income tax liability for a taxable year which begins after December 31, 1977.

The taxpayer shall file the notice, on the form prescribed by the department, within one hundred twenty (120) days after the modification is made. See also 45 IAC 3.1-1-94.

Taxpayer requests that the department waive the negligence penalty.

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DISCUSSION

Taxpayer was assessed an underpayment penalty because it failed to report its Federal RAR adjustments as required by IC 6-3-4-6 for fiscal years 1994 and 1995.

Taxpayer, in a letter dated May 26, 1998 protested penalties assessed and states that the underpayment of tax was not intentional, it pays a substantial amount of income taxes and employs hundreds of Indiana residents resulting in hundreds of thousands of tax revenues for the State for many years. Every federal audit they have been involved in has resulted in additional taxable income. Assessing a penalty because of this seems unfair to taxpayers. Further it questions if the penalty assessed was the result of the amended returns being filed late. Taxpayer states it consists of only one person in the State tax department and they file in every State which makes it feasibly impossible to amend every State return in a timely manner.

Taxpayer, according to IC 6-3-4-6 has one hundred and twenty (120) days to file its RAR adjustments with the Department. Taxpayer failed to comply. Taxpayer questions if the penalty assessed was because the amended returns were filed late. At the time of billing, the department had not received the amended returns or notice from the taxpayer that Federal RAR's are pending. In addition, the taxpayer was already aware of the problem in early 1997 where it failed to include RAR adjustments for 1993.

Taxpayer has not provided reasonable cause to allow the department to waive its negligence penalty. The Indiana Code and Regulations are clear regarding notification to the department of a taxpayer's RAR adjustments.

FINDING

Taxpayer's protest is denied.